BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Petitions for Reallocation of Local Tax
Under the Uniform Local Sales and Use Tax Law of
Cities of Agoura Hills, et al.
Case ID 469672

Appearances:

Petitioner Fillmore:	Joseph A. Vinatieri, Attorney
Petitioner Moreno Valley:	Robin Sturdivant, Representative
All other Petitioners:	Eric Myers, Attorney
Sales and Use Tax Department:	Cary C. Huxsoll, Tax Counsel
Appeals Division:	Trecia M. Nienow, Tax Counsel IV

MEMORANDUM OPINION

This opinion considers when a seller's permit must be issued to a "buying company" as that term is defined by California Code of Regulations, title 18, section (Regulation) 1699, subdivision (h). We conclude that, where a buying company is recognized as an entity separate from its relative(s), the requirements for issuing a seller's permit to that buying company are identical to those for issuing a seller's permit to any other type of entity, including specifically the requirement that the permit be issued for a place of business where the entity engages in business as a seller of tangible personal property.

The retailer in this appeal (Retailer) is a buying company as defined by Regulation 1699, subdivision (h)(1). It sells equipment, fixtures, and supplies for consumption nationwide to its parent and sole customer pursuant to a Master Sale Agreement (MSA) negotiated outside this state and entered into on May 1, 2006. It is undisputed that, as explained in Regulation 1699, subdivision (h)(2), Retailer was not formed for the sole purpose of redirecting local sales tax and, under Regulation 1699, subdivision (h)(1), thus must be regarded as a separate legal entity from its parent for purposes of issuing a seller's permit. Retailer maintains two warehouses in California, neither of which are located in Fillmore, and has other facilities located outside California, including its corporate headquarters. On the same day it entered into the MSA, Retailer also entered into an Agency Agreement with an unrelated third party (UTP) in connection with an Economic Development Agreement that UTP had previously entered into with Fillmore in June 2003. As required by the Agency Agreement, UTP opened an office in Fillmore on June 1, 2006, and applied for and received a seller's permit for that office in Retailer's name. For sales delivered to its parent in California on and after June 1, 2006, Retailer has reported its local tax as sales tax to the office of UTP in Fillmore.

The Sales and Use Tax Department concluded that a seller's permit should not have been issued to Retailer for the Fillmore location. Thus, it determined that for sales delivered from inventories of Retailer's California warehouses, the local tax is allocable as sales tax to the location of the warehouse making the delivery and that for sales delivered from inventories of Retailer's out-of-state facilities or its vendors, the local tax is allocable as use tax through the

countywide pools of the places of use. The Appeals Division agreed, and recommended that the Fillmore petition be denied and all other petitions be granted.

Fillmore appealed to us, contending that, because Retailer is a buying company that must be separately recognized under Regulation 1699, subdivision (h), issuance of a seller's permit to Retailer for the Fillmore location is mandatory, relying on the final sentence of that provision: "Such a buying company shall be issued a seller's permit and shall be regarded as the seller of tangible personal property it sells or leases." That is, Fillmore essentially contends that this provision mandates the Board issue a seller's permit to whatever location the buying company desires to hold a seller's permit, without regard to the otherwise applicable rules for issuing seller's permits. Fillmore thus contends that the local tax was properly allocated directly to it.

We reject Fillmore's reading that Regulation 1699, subdivision (h), mandates the issuance of a seller's permit to a buying company at whatever location the buying company desires to hold a seller's permit, without regard to the otherwise applicable rules for issuing seller's permits, for the following reasons.

We start with Revenue and Taxation Code section 6066 which requires persons desiring to engage in business as a seller of tangible personal property to apply for a seller's permit for each such place of business, and Revenue and Taxation Code section 6067 which requires the Board to issue a seller's permit to that seller once all conditions are satisfied. These provisions are implemented by subdivision (a) of Regulation 1699, which requires a seller to hold a permit for each place of business in this state at which orders for sales are customarily taken or contracts for sales customarily negotiated. A seller's permit is not issued to a seller's business location that does not customarily negotiate sales or take orders for sales, except in the case of warehouses under certain specific circumstances. Generally, seller's permits are not issued to a warehouse that does not negotiate sales or take orders. However, a person maintaining a stock of goods in this state for sale must hold at least one seller's permit, so if that person has no California location other than the stock of goods or had another California location but that location does not customarily negotiate or take orders for sales, a seller's permit would be issued to the warehouse location. Additionally, a seller's permit will be issued to a seller's warehouse location from which it makes deliveries from the stock of goods pursuant to retail sales negotiated outside California. (Rev. & Tax. Code, §§ 6066, 6067; Cal. Code Regs., tit. 18, § 1699, subd. (a).) Therefore, based on the statutes, as implemented by subdivision (a) of Regulation 1699, a location for any business, including a buying company, is eligible for a seller's permit only if that location is a place where orders are taken, where contracts are customarily negotiated, or where a stock of merchandise is stored under the specified conditions discussed above.

Further, subdivision (h) of Regulation 1699 is not an exception to the general rule provided by section 6066, interpreted by subdivision (a) of Regulation 1699, but rather an application of the rules set out in section 6066, interpreted by subdivision (a) of Regulation 1699 to buying companies. The focus in promulgating subdivision (h) of Regulation 1699 was not on what business locations qualified for a permit or why, but rather to recognize buying companies meeting certain requirements as legitimate separate entities. Nowhere in the regulatory file (e.g., discussion papers, issue paper) for the promulgation of subdivision (h) of Regulation 1699 was there any statement that buying companies should be entitled to a seller's permit merely by virtue of being a buying company or that buying companies should enjoy more favorable status than other entities. That is, while subdivision (h) mandates entitlement to a seller's permit and

treatment as a "seller" for sales and use tax purposes, it does not and cannot abrogate other legal requirements to the issuance of a seller's permit, including particularly as to the location to which a permit can attach. As provided by section 6066 and explained in Regulation 1699, subdivision (a), a seller's permit is issued not only to a person but also to an appropriate location of that person.

Moreover, section 6072, interpreted by subdivision (f) of Regulation 1699, specifically indicates that a permit shall be held only by persons actively engaging in or conducting a business (in this state) as a seller of tangible personal property. There can be no lower standard applied to buying companies.

Since Retailer is a buying company that we recognize as a separate legal entity, we agree with Fillmore that issuance of a seller's permit for any *applicable* location is mandatory. However, Retailer is required to hold, and allowed to hold, a seller's permit only for location(s) authorized to hold a seller's permit under the Board's regulations. Here, we find that the locations that must hold a seller's permit pursuant to the provisions of subdivision (a) of Regulation 1699 are the two warehouse locations because the MSA under which the subject sales were made was negotiated outside California and such sales were delivered from Retailer's stocks of goods stored at the California warehouses. Thus, without regard to any other factor, and even interpreting the last sentence of subdivision (h)(1) of Regulation 1699 as narrowly as Fillmore asserts, this clearly complies with that sentence. We do not agree that Retailer may choose a location for issuance of a seller's permit that is not otherwise required, or allowed, to hold a seller's permit based on that regulatory provision. We further find that a seller's permit was incorrectly issued to Retailer for the Fillmore location because that location was not used to take orders for sales or for negotiating contracts for sales, nor is a stock of goods for sale maintained at that location. (Rev. & Tax. Code, §§ 6066, 6067, 6072; Cal. Code Regs., tit. 18, § 1699, subds. (a), (f), & (h).) Accordingly, we conclude that the subject local sales tax should be reallocated to the jurisdiction of the California warehouse making the delivery, and the subject local use tax should be reallocated through the countywide pools of the places of use.

Adopted at Sacramento, California on November 14, 2012.

Jerome Horton, Chairman

Betty T. Yee, Member

Marcy Jo Mandel, Member*
*For John Chiang, pursuant to Government Code section 7.9.